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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-150
	)	
Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	

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COMMENTS OF U S WEST, INC.

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TABLE OF CONTENTS

SUMMARY

The basic issue in this proceeding is whether the Federal Communications Commission's ("Commission") existing cost allocation and affiliate transactions rules satisfy the requirements in the Telecommunications Act of 1996 ("1996 Act") that Bell Operating Companies' ("BOC") services provided on an integrated basis or through a separate affiliate are not subsidized by regulated ratepayers. U S WEST, Inc. ("U S WEST") contends that they do. Requiring carriers to implement new accounting systems -- or even nontrivial changes to their existing systems -- at this critical time would be burdensome and baseless absent convincing evidence that the current system is not working. U S WEST doubts that any party can make such a showing.

In particular, U S WEST strongly opposes several of the changes to the affiliate transactions rules that were first proposed in CC Docket No. 93-251. The Commission should not prescribe uniform valuation methods for all affiliate transactions. Instead, it should retain the current distinction between asset transfers and the provision of services because assets and services are fundamentally different. Moreover, the Commission should not eliminate the prevailing company price standard as a basis for valuing transactions between a carrier and a nonregulated affiliate because carriers would then have to perform costly studies to determine fully distributed cost for every affiliate transaction.

U S WEST supports the Commission's view that the procedures carriers use in estimating fair market value should vary with the circumstances of the

transaction, and that the Commission should not specify the methodologies that carriers must follow to estimate fair market value. At the same time, however, U S WEST believes that the Commission should not impose a "good faith" requirement, and should not set criteria for determining what constitutes a good faith estimate of fair market value. Carriers are experienced in estimating fair market value, and have done so successfully for years. No additional requirements or regulations are needed.

In regard to tariff-based valuation, U S WEST supports the Commission's proposal to amend its affiliate transactions rules to substitute rates appearing in publicly filed agreements or statements for tariffed rates. In regard to the allowable rate of return, U S WEST does not agree that the BOCs should be required to use the prescribed interstate rate of return for valuing their transactions with their affiliates engaged in manufacturing, in-region interLATA services and interLATA information services. Rather, the BOCs should be permitted to continue to use a blended, or composite, rate of return based on the weighted average of the authorized interstate and intrastate rates of return for all jurisdictions within which the BOC operates.

In general, imposing more stringent accounting requirements would not be in the public interest because the costs would far outweigh any perceived benefits. It would also be unwise to develop special rules for electronic publishing affiliate transactions. If anything, the Commission should consider streamlining and phasing out the current rules because there are other effective constraints on local exchange carrier pricing and costing decisions. For example, price cap regulation removes any incentive to misallocate costs even with the sharing obligation because if prices are below the cap, rates cannot be increased as changes in costs occur. Also, rigid cost allocation and affiliate transactions rules are vestiges of the old rate of return regulation model and anathema to the dynamic, competitive model that Congress put in its place. U S WEST looks forward to the day when the current rules are eliminated entirely, initially through forebearance and finally through repeal.

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I. INTRODUCTION

The Federal Communications Commission ("Commission") should heed the old adage: "If it ain't broke, don't fix it." The current Part 32 and Part 64 rules have been in place for eight years and have a proven track record of effectively preventing cross-subsidization. The Commission has affirmed the success of the current system on numerous occasions.[1] Changing the rules or adding significant new ones at this stage would not be in the public interest. Nor would it help the

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[1] See, e.g., In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, FCC 96-319, rel. Aug. 13, 1996 at ¶ 46; In the Matter of Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd. 7362, 7374 ¶ 27 (1996).

Commission achieve its goal of ensuring that the rules are "clear, consistent and predictable."[2]

U S WEST, Inc. ("U S WEST") strongly opposes any new rules or procedures that would require significant modification of existing systems. In particular, U S WEST continues to oppose several of the changes to the affiliate transactions rules that were first proposed in CC Docket No. 93-251 and which are resurrected in this proceeding. U S WEST has invested heavily in complying with the current rules. It faces many new burdens and costs as it develops systems and otherwise devotes significant resources to meeting the myriad demands for interconnection and access. Requiring U S WEST to implement a new accounting system -- or even nontrivial changes to its existing system -- at this critical time would be extremely burdensome and unfair.

II. JURISDICTIONAL ISSUES

At various places in the NPRM, the Commission asks whether it has intrastate jurisdiction with respect to accounting matters under the 1996 Act.[3] To ensure a complete record, the Commission also inquires whether it has authority to

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[2] In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking, FCC 96-309, rel. July 18, 1996 ¶ 9 ("NPRM").

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"); NPRM ¶ 34 (whether Section 260 confers jurisdiction over intrastate information services); ¶ 43 (whether Sections 271 and 272 confer jurisdiction over both interstate and intrastate interLATA services and interLATA information services).

preempt state regulation with respect to accounting matters pursuant to Louisiana PSC[4] and, if so, whether it should exercise that authority or continue its prior policy of not preempting states from using their own cost allocation procedures for intrastate purposes.[5]

U S WEST believes the Commission should simply apply its Part 32 and Part 64 rules to the nonregulated services that will be provided pursuant to the 1996 Act, and should consider the necessity of preemption on a case-by-case basis, as it does today. There is no record to justify a blanket preemption of state cost allocation procedures for intrastate purposes.

III. SAFEGUARDS FOR INTEGRATED OPERATIONS

U S WEST agrees that the existing Part 64 cost allocation rules generally satisfy the statute's requirement of safeguards to ensure that new Bell Operating Company ("BOC") services provided on an integrated basis are not subsidized by regulated ratepayers.[6] U S WEST has invested considerable resources in implementing internal cost allocation systems to help ensure compliance with these rules. The Commission correctly notes that "[r]edesigning these internal systems to accommodate a fundamentally different cost allocation approach might impose substantial administrative and financial costs on the carriers."[7] The costs of a

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[4] Id. ¶ 59 referencing Louisiana Public Service Comm'n, 476 U.S. 355 (1986).

[5] Id. ¶¶ 36, 50, 56, 100, 116.

[6] Id. ¶ 27.

[7] Id. ¶ 28.

fundamentally new approach would be huge, both for private industry and for the Commission. It would take several years to design and implement a new system. As soon as the new system was up and running, it would be time to dismantle it because many of the separate affiliate requirements will disappear in a few years and there will be competition in the local exchange market. Investing time and money in a new accounting system at this late stage of the game makes no sense, particularly when the current system has worked well.

A. Telemessaging Service (Section 260)

The Commission correctly notes that provision of telemessaging services is already governed by its Part 64 rules and, to the extent telemessaging is provided through affiliates, its affiliate transactions rules also apply.[8] U S WEST agrees that applying the Part 64 rules will safeguard against the subsidies prohibited by Section 260(a)(1).[9] No additional rules or safeguards are necessary. In addition, U S WEST agrees that the same analysis applies to other interLATA information services covered by Section 272.[10]

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[8] Id. ¶ 30.

[9] 1996 Act, 110 Stat. at 79 § 260(a)(1) prohibits each "local exchange carrier subject to the requirements of Section 251(c) that provides telemessaging . . . [from] subsidiz[ing] its telemessaging service directly or indirectly from its telephone exchange service or its exchange access."

[10] NPRM ¶ 94. For U S WEST's position regarding classification of telemessaging as an information service, see U S WEST Comments, CC Docket No. 96-149, filed Aug. 15, 1996 at 9-11.

B. InterLATA Telecommunication Services (Section 271)

1. Incidental InterLATA Services

The present cost allocation rules in Part 64 are adequate to prevent the adverse effects proscribed by Section 271(h)[11] when incidental interLATA services are provided on an integrated basis. If provided through a separate subsidiary, the affiliate transactions rules would apply. No additional rules or safeguards are necessary or desirable.

2. Integrated Provision of InterLATA Services

The Commission correctly notes that BOCs are permitted to provide certain regulated, interLATA telecommunications services (including out-of-region services and certain types of incidental services) on an integrated basis subject to dominant carrier regulation.[12] There is no need to adopt a separate regulated category for those interLATA services provided on an integrated basis, nor is there a need to account for these regulated services as nonregulated for Title II accounting purposes, as proposed in paragraph 39 of the NPRM. The current rules provide

[11] Section 271(h) of the 1996 Act states that "[t]he Commission shall ensure that the provision of [incidental interLATA services] . . . will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market." 1996 Act, 110 Stat. at 91 § 271(h).

[12] NPRM ¶ 39, citing to the 1996 Act, 110 Stat. at 92 § 272(a)(2)(B) and the BOC Out-of-Region Order (In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, Report and Order, FCC 96-288, rel. July 1, 1996).

adequate tracking mechanisms and safeguards to ensure that local exchange customers do not subsidize interexchange operations.

Under the Commission's current accounting rules, all costs for regulated, out-of-region and incidental interLATA services would be recorded on the carrier's Part 32 books of account, along with all other regulated and nonregulated services. Included in these costs would be any access charges paid by the carrier. These access charges would be recorded in Account 6540 (Access Expense) as either interstate or intrastate. In addition, all costs carry a study area designation which allows identification of in-region and out-of-region services. Regulated services (including any permissible interLATA services) as well as nonregulated services are then allocated a portion of common overheads in the Part 64 cost allocation process. These allocations are performed by study area. Therefore, under current rules, operations conducted out-of-region would be allocated a portion of common costs.

Nonregulated results are then removed prior to the Part 36 rules which separate the remaining local exchange regulated costs in the appropriate jurisdiction, i.e., interstate and intrastate results. Out-of-region interLATA costs, including overhead, could be removed in a similar manner prior to separation so that they would not impact local exchange and exchange access results. As shown above, local exchange carriers ("LEC") can already properly account for, allocate and identify the costs of out-of-region interLATA and incidental services provided on an integrated basis. Therefore, the Commission should not adopt either of the proposals in paragraph 39.

3. BOC Accounting for Imputed Access Charges

The Commission proposes that the BOCs record imputed exchange access charges as an expense that would be assigned directly to nonregulated activities with a credit to the regulated exchange access revenue account.[13] U S WEST does not agree with this approach because recording the charge as a nonregulated expense might drive additional overhead expense. This would be inappropriate because the imputed charge would already contain an element of overhead. Therefore, accounting for these costs as an expense on the nonregulated side could result in a doubling of overhead costs allocated to the nonregulated activity.

A better alternative is for the BOCs to debit the appropriate nonregulated revenue account (5280) for the direct costs incurred by the nonregulated activity, and then credit to the regulated exchange access revenue account (5080). This would be consistent with Part 32.5280(b).[14]

4. BOC Accounting for InterLATA or IntraLATA Facilities or Services Provided to Its InterLATA Affiliate

The Commission asks whether, in view of Section 272(e)(4),[15] it may require BOCs that provide interLATA or intraLATA facilities or services on an integrated

[13] Id. ¶ 41.

[14] 47 CFR § 32.5280(b).

[15] Section 272(e)(4) of the 1996 Act states that "[a] Bell operating company and an affiliate that is subject to the requirements of section 251(c) . . . may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the

basis to provide them to their own internal operation only at the same rates as those facilities or services are made available to all carriers.[16] Section 272(e) already requires this. The statute is clear, and there is no need for the Commission to implement it with a rule.

In addition, the Commission asks which rate should be applied to BOC affiliate transactions when the BOCs' rates differ for different carriers. There is no reason for the Commission to prescribe which rate applies to BOC affiliate transactions. The BOCs are already required by statute to provide facilities and services on an "equal basis."[17] By definition, therefore, there will be no different rates. Moreover, these services will be provided under tariff and thus there will be only one rate that applies to any given set of services. That rate will be the same one that applies to BOC affiliate transactions. If different rates are charged (e.g., for an unbundled element), then the BOC should compare the services and/or facilities it provided to its affiliate with the services and/or facilities that it provided to other carriers, and apply the rate that the most comparable carrier paid.

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same terms and conditions, and so long as the costs are appropriately allocated." 1996 Act, 110 Stat. at 93-94 § 272(e)(4).

[16] NPRM ¶ 42.

[17] 1996 Act, 110 Stat. at 94 § 272(e)(2).

C. Alarm Monitoring (Section 275)

The present cost allocation rules are sufficient to prevent subsidization of alarm monitoring services as prohibited in Section 275(b)(2).[18]

D. Payphone Services (Section 276)

The BOCs have provided payphone services for many years. The 1996 Act directs the Commission to prescribe nonstructural safeguards for BOC payphone service that "at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding."[19] While U S WEST agrees that the Commission should apply Computer III-type accounting safeguards to BOC payphone operations,[20] any subsequent modification or streamlining of the Computer III accounting rules should also apply to BOC payphone operations.

U S WEST also agrees that the Commission should reclassify payphone service as a nonregulated activity so that its costs are separated from the telephone exchange service and exchange access operations that would continue to be regulated activities. Accordingly, it makes sense for the BOCs to continue to use

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[18] Section 275(b)(2) specifies that an incumbent LEC engaged in the provision of alarm monitoring services "not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations." 1996 Act, 110 Stat. at 105 § 275(b)(2).

[19] Id. at 106 § 276(b)(1)(C).

[20] NPRM ¶ 58.

the Commission's Part 32 accounts to record their payphone service activities, but would classify their payphone investment, expenses and revenues as nonregulated for Title II accounting purposes.[21] This approach would comply with the 1996 Act's mandate to prescribe nonstructural accounting safeguards for the BOCs' payphone services at least equal to those adopted in Computer Inquiry-III, and would prevent the subsidization of payphone service by telephone exchange service or exchange access operations.

IV. SAFEGUARDS FOR SEPARATED OPERATIONS

U S WEST agrees with the Commission's tentative conclusion that, except where the 1996 Act imposes specific additional requirements, its current affiliate transactions rules generally satisfy the statute's requirement of safeguards to ensure that services provided through a separate affiliate are not subsidized by subscribers to regulated telecommunications services.[22] As with the Part 64 cost allocation rules, the benefits of a fundamentally different approach would be vastly outweighed by the costs that implementation of such a system might entail.

U S WEST does not support the Commission's proposal to amend its current affiliate transactions rules to incorporate certain of the modifications proposed in the Affiliate Transactions Notice.[23] None of the proposed rule changes is necessary

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[21] Id. ¶ 59.

[22] Id. ¶ 64.

[23] Id. ¶ 65. And see In the Matter of: Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their

or desirable. If the Commission decides to adopt any of the proposed modifications, it should apply them only to those entities that engage in activities for which the 1996 Act requires the use of a separate affiliate. Separate affiliates that are not mandated by the 1996 Act should be governed by the existing rules.

A. Manufacturing And InterLATA Services (Section 272(a))

1. Accounting Requirements

Section 272(a)(2) of the 1996 Act requires the use of a separate affiliate for certain activities (hereinafter referred to as "mandatory affiliates").[24] Section 272(b)(2) requires that the BOCs' mandatory affiliates "maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate."[25] To implement this provision, the Commission asks whether it should require that the mandatory affiliates maintain their books, records and accounts in accordance with generally accepted accounting principles ("GAAP").[26] This would be

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Nonregulated Affiliates, Notice of Proposed Rulemaking, 8 FCC Rcd. 8071, 8076 ¶ 9 (1993)("Affiliate Transactions Notice").

[24] Section 272(a) states that a separate affiliate is required for manufacturing, origination of interLATA telecommunications services (other than incidental interLATA, out-of-region services and previously authorized services) and interLATA information services (other than electronic publishing and alarm monitoring). 1996 Act, 110 Stat. at 92 § 272(a). Section 274 requires a "separated" affiliate for electronic publishing. Id. at 100 § 274(b).

[25] NPRM ¶ 68. And see 1996 Act, 110 Stat. at 93 § 272(b)(2).

[26] NPRM ¶ 68.

a reasonable requirement because GAAP are widely employed and commonly understood. U S WEST's accounting for affiliate transactions is already based on GAAP in part because the reports that U S WEST is required to file with the Securities and Exchange Commission ("SEC") must follow GAAP. No additional accounting, bookkeeping, or record keeping requirements for these mandatory affiliates are necessary.

2. "Arm's Length" Transactions

Section 272(b)(5) of the 1996 Act requires that transactions between the BOC and its mandatory affiliates be conducted on "an arm's length basis."[27] In implementing this section of the statute, the Commission asks whether it should adopt requirements similar to those imposed on AT&T Corp. ("AT&T") in the Computer II Final Decision.[28] U S WEST does not understand the Commission's proposal. The Computer II requirements did not apply to transactions between a BOC and a separate affiliate. Rather, they applied to transactions between an enhanced services/CPE affiliate and any affiliated manufacturing entity (i.e., affiliate to affiliate). There is no need for the Commission to have special "affiliate-

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[27] 1996 Act, 110 Stat. at 93 § 272(b)(5).

[28] NPRM ¶ 70. And see In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, 498 (1980) ("Computer II Final Decision") (adopting Section 64.702(c)(3) of the Commission's rules), on recon., 84 FCC 2d 50 (1980), further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

to-affiliate" rules for mandated affiliates. The existing affiliate transaction rules already ensure that prices are "compensatory."[29]

U S WEST sees no need for the Commission to amend its rules to address the other Section 272(b)(5) requirement that all transactions be "reduced to writing and available for public inspection."[30] Under Rule 64.903(a)(4), carriers are required to disclose in Section V of the Cost Allocation Manual certain information regarding transactions among affiliates.[31] These filings provide information about the nature, frequency and terms of all affiliate transactions. An interested party could then review the written agreement at the company's office during normal business hours. Internet access to information about affiliate transactions would also meet the obligation to "make available for public inspection." However, no company should be ordered to post internal documents on the Internet because the company would be unable to monitor who is inspecting its agreements.

Further, the Commission seeks comment as to whether it should adopt safeguards to protect any sensitive or confidential information that such publicly available documents may contain. U S WEST recommends that the Commission adopt and apply the standards for the protection of confidential information that were advocated in the Comments of the Joint Parties in GC Docket No. 96-55.[32]

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[29] Computer II Final Decision at 482-83 ¶ 252. See also 47 CFR § 32.27(d).

[30] NPRM ¶ 74.

[31] 47 CFR § 64.903(a)(4).

[32] See Comments of Joint Parties, GC Docket No. 96-55, filed June 14, 1996 at Section III.

U S WEST does not agree with the Commission's interpretation that "transactions" under Section 272(b)(5) include requests by an affiliate to its BOC for telephone exchange service or exchange access.[33] The Commission's interpretation is not in accord with the commercial meaning of the term "transaction." A transaction is much more than a mere request.[34] The Commission's authority to prescribe accounting safeguards for affiliate transactions certainly does not permit it to require that all BOC/affiliate *requests* for telephone exchange service or exchange access be reduced to writing and made available for public inspection. Once the BOC and its affiliate have *agreed upon* the terms and conditions for telephone exchange service or exchange access, the agreement would constitute a transaction and would have to be reduced to writing and made available for public inspection.

a. Identical Valuation Method for Assets and Services

Under current Commission rules, if an asset transfer is neither tariffed nor subject to prevailing company prices, carriers are required to record the transfer at the higher of net book cost and estimated fair market value when it is the seller, and at the lower of net book cost and estimated fair market value when the carrier

[33] NPRM ¶ 75.

[34] See Bozied v. Edgerton, 58 N.W.2d 313, 316 (Minn. 1953) "a 'transaction' involved business negotiations which have been either wholly or partly brought to a conclusion;" and see Knoepfle v. Suko, 108 N.W.2d 456, 462 (N.D. 1961), appeal after remand, 114 N.W.2d 54 (N.D. 1962) "a transaction is 'the end result of transacting . . . and the act of transacting implies reciprocal actions or statements on the part of the parties engaged in the act.'"

is the purchaser. In contrast, carriers are required to record all non-tariffed services other than those having prevailing company prices at the providers' fully distributed costs.[35]

The Commission contends that its current rules regarding the valuation of affiliate services may not be consistent with the Section 272(b)(5) requirement for "transactions . . . on an arm's length basis."[36] Accordingly, the Commission proposes to prescribe uniform valuation methods for all affiliate transactions. Specifically, the Commission proposes to require that affiliate transactions not involving tariffed assets or services be recorded at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee. "Cost" would continue to be defined as net book cost for asset transfers, and fully distributed cost for service transfers. U S WEST opposed this proposal when it was first made in CC Docket No. 93-251, and has not changed its position.[37]

U S WEST sees no reason to apply an identical standard to valuation of assets and services. Assets and services are fundamentally different. U S WEST's experience is that fair market value cannot be determined for many services

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[35] See Joint Cost Order, 2 FCC Rcd. at 1336-37 ¶¶ 294-301.

[36] NPRM ¶ 78.

[37] In the Matter of: Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and Their Nonregulated Affiliates, Notice of Proposed Rulemaking, 8 FCC Rcd. 8071, 8080-81 ¶ 24 (1993) ("CC 93-251 Notice"). And see U S WEST Comments, CC Docket No. 93-251, filed Dec. 10, 1993 at 14-16.

provided by carriers and nonregulated affiliates because comparable services are simply not available in the marketplace. Notwithstanding the specific reference to asset transfers in Section 274(b)(4),[38] there should be a different valuation standard for asset transfers and the provision of services in the context of electronic publishing affiliate transactions.[39] No special rules are needed to account for electronic publishing affiliate transactions.

b. Prevailing Company Prices

The Commission proposes to amend its affiliate transactions rules to eliminate the valuation of affiliate transactions based on prevailing prices for transactions between a BOC and its mandatory affiliates.[40] Under this proposal, transactions from the carrier to the mandatory affiliate would be recorded at tariffed rates, if applicable, or at the higher of fair market value or fully distributed cost. Transactions from the mandatory affiliate to the carrier would be recorded at the lower of fully distributed cost or fair market value. U S WEST opposes the Commission's proposal because elimination of the prevailing price standard would force carriers to implement costly accounting procedures to determine the fully distributed cost of every affiliate transaction.[41]

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[38] 1996 Act, 110 Stat. at 93 § 274(b)(4).

[39] NPRM ¶ 112.

[40] Id. ¶ 82.

[41] See United States Telephone Association Comments, CC Docket No. 93-251, filed Dec. 10, 1993 at 17.

To justify this proposal, the Commission expresses its concern that affiliate transactions conducted "on an arm's length basis" may not entail the same marketing efforts and transactional costs as sales to non-affiliates, and therefore the prevailing price in that context may not reflect fair market value. In its earlier CC 93-251 Notice, the Commission tentatively concluded that it should eliminate prevailing company price as a valuation method only for transactions between carriers and nonregulated affiliates whose primary purpose was to serve the carrier and other affiliates because dealings between the carrier and such affiliates are inherently different from arm's length transactions.[42] Here, however, the 1996 Act already requires that all transactions between the BOCs and mandatory affiliates be at arm's length, regardless of the affiliate's primary purpose.

Furthermore, an affiliate's predominant purpose is irrelevant to establishing whether its prevailing company prices reflect fair market value. U S WEST believes that prevailing company prices are an appropriate method of valuing affiliate transactions where the prevailing company prices represent fair market value. While the Commission expresses concern over the difficulty of determining the prevailing price[43] (a concern that U S WEST does not share), the NPRM does not explain how ratepayers might be disadvantaged or unfairly burdened by bearing costs paid at prevailing company prices that are equal to fair market value. If the Commission insists on establishing a percentage benchmark (i.e., requires that a

[42] CC 93-251 Notice, 8 FCC Rcd. at 8079 ¶ 19.

[43] NPRM ¶ 81.

certain percentage of the affiliate's overall business be provided to non-affiliates), the affiliate's output should be measured based on historical data, not current year data.[44]

c. Estimates of Fair Market Value

The Commission proposes to allow carriers to make good faith determinations of fair market value, where such a valuation is required under the affiliate transactions rules.[45] It is true that "the procedures carriers use in estimating fair market value should vary with the circumstances of the transaction" and that specifying a valuation methodology "would impose unnecessary burdens and costs on the BOCs and other incumbent local exchange carriers."[46] It is not necessary to impose a "good faith" requirement on carriers. Carriers have estimated fair market value successfully for years with no such requirement. Because the "good faith" requirement is not necessary, the Commission need not set criteria for determining what constitutes a good faith estimate of fair market value.[47]

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[44] See U S WEST Comments, CC Docket No. 93-251, filed Dec. 10, 1993 at 21.

[45] NPRM ¶ 83.

[46] Id.

[47] Id. ¶ 84.

d. Tariff-based Valuation

The Commission seeks comment about the status of tariff-based valuation if incumbent LECs are not required to provide interconnection and collocation service and network elements pursuant to tariff.[48] The NPRM points out that a BOC might submit to a state commission for approval an agreement adopted by negotiation or arbitration without ever filing a tariff. Or the BOC might file a statement pursuant to Section 252(f) setting forth the terms on which it would provide services to all customers who desire them. U S WEST believes that the Commission should amend its affiliate transactions rules to substitute rates appearing in such publicly filed agreements and statements for tariffed rates. Such an amendment would be a logical extension of the Commission's prior decision to amend its rules to substitute rates appearing in publicly filed price lists for tariffed rates.[49]

e. Return Component for Allowable Costs

Under current rules, carriers that utilize a fully distributed cost to value affiliate transactions include in their cost computations a component for rate of

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[48] Id. ¶ 86.

[49] See In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, Report and Order, 2 FCC Rcd. 1298, 1334-35 ¶¶ 285-92 (1987); on recon., 2 FCC Rcd. 6283 (1987); on further recon., 3 FCC Rcd. 6701 (1988); aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).